IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO. 510 OF 2003

IN

SUMMARY SUIT NO. 2781 OF 2000

Saraf Chemicals Limited .. Plaintiffs

versus

Mr.Shyam Gopal Nemlekar & Anr. .. Defendants

...

Mr.V.R. Dhond i/b Federal & Rashmikant for the plaintiff.

Mr.A.G. Damle for the defendant.

CORAM : D.G. KARNIK,J.

DATED : 2nd March 2005.

P.C.:

1. Heard the learned counsel for the parties.

2. By a memorandum of understanding dated 9th February 1998, M/s.Rank Organics of which the defendant nos.1 and 2 are the partners agreed to sell

and the defendant agreed to purchase the running business of a partnership subject to the terms and conditions mentioned therein. The total price agreed was Rs.90,00,000/- and the plaintiff paid an advance of Rs.5,01,000/-. According to the plaintiff, representations made by the defendant in the memorandum were not true and therefore, the plaintiff terminated the Memorandum of Understanding and asked for the refund of the earnest money paid. As the defendants have failed to refund the money, the present suit has been filed.

3. The defendants have admitted execution of the memorandum and also receipt of the earnest money. However, according to the defendant, plaintiff committed a breach of the memorandum. The plaintiff was never sincere in its intention but it entered into the memorandum with a view to obtain the inside information about the plant and business under the garb of carrying out a due diligence. After having carried out the due diligence the plaintiff backed out of the MOU. The defendants are therefore, not liable to repay the money to the plaintiffs. The facts pleaded by the defendants give rise to a substantial defence. Triable issues arise in this

suit.

4. Hence, the defendants are granted unconditional leave to defend the suit. Suit shall stand transferred to the list of commercial causes. The defendants shall file written statement within a period of one month.

D.G. KARNIK, J